STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DONALD LAVERN RICHARD LEE CHAVOUS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

VERONICA JEAN TILL,

Respondent-Appellant

and

DONALD CHAVOUS,

Respondent.

UNPUBLISHED
April 25, 2000

No. 222483
Wayne Circuit Court
Family Division
LC No. 90-288673

Before: Hood, P.J., and Gage and Whitbeck, JJ.

PER CURIAM.

Respondent Veronica Till appeals by delayed leave granted and challenges the trial court's order terminating her parental rights to her infant son, Donald Lavern Richard Lee Chavous, under MCL 712A.19b(3)(g), (i), and (j); MSA 27.3178(598.19b)(3)(g), (i), and (j). Respondent Donald Chavous does not appeal the trial court's decision. We affirm.

I. Facts

Veronica Till gave birth to her son, Donald Chavous, on July 30, 1998. Although the infant was born healthy, hospital tests determined that the infant had been exposed to cocaine and opiates before birth. When FIA protective services worker Talisa Copeland met with Till on July 31, 1998, Till, who had a history of using drugs for more than ten years, admitted that she used drugs a week before giving birth.

FIA placed the infant in foster care on August 1, 1998 with Till's sister, Willa Tyson, who had custody of two of Till's three other children,[1] and petitioned the court to terminate her parental rights. Till voluntarily entered an in-patient drug rehabilitation program within a week of giving birth, and successfully completed the program three months later. When released from the rehabilitation program, Till began attending Narcotics Anonymous and Alcoholics Anonymous three to four times a week, and was referred to Franklin-Wright Settlement, an outpatient social services program. All the while Till continued to visit her infant son every week at FIA offices.

On the first substantive day of the termination hearing in front of a referee, Till acknowledged the mistakes she made raising her other children and informed the referee that she was working very hard to turn around her life. Copeland testified that she believed it was not necessary to terminate Till's parental rights to her infant at that time. Rather, she recommended that the referee impose a number of conditions on Till, such as drug screening, and only terminate Till's parental rights if she "falter[ed]." Accordingly, Till entered into a parenting agreement with FIA that required her to submit to random, weekly drug screening, including an initial drug assessment. Additionally, Till agreed to attend and document her attendance at Narcotics Anonymous or Alcoholics Anonymous three times a week, enroll and complete parenting classes, participate in individual counseling, visit her child weekly under supervision at FIA offices, attend all related hearings, and maintain a safe home that was suitable for a child.

Evidently, Till substantially complied with the parenting agreement from December 1998 through mid-February 1999. The only problems Jacqueline Strother, the foster care worker assigned to the case, was aware of were Till's failure to obtain permission before visiting her infant at Tyson's house at Christmas, a positive drug test after she took medication from an old prescription, and a misunderstanding about the schedule for visitation one week. Till seemed to comply with visitation "anxiously" and the problems she had delivering the food she received from a government program for the infant to Tyson occurred before the parenting agreement was in place. Strother recommended continuing the temporary custody arrangement. Only Tyson recommended terminating Till's parental rights because she believed that Chavous was violent toward Till. Even though Tyson had not seen Chavous act violently in the six months since his baby was born, she had seen him arguing with Till at the previous hearing. Despite Tyson's testimony, much of which Till denied, the referee continued the temporary custody arrangement.

The parties reconvened on March 16, 1999, in front of the referee. FIA foster care worker Sabrina Baker testified that five of Till's drug screens were clean but Till's February 22, 1999 drug screen indicated that she had taken cocaine; the laboratory had yet to provide the results of the most recent drug tests. Baker noted, however, that Till had complied with the parenting agreement in every other respect. Baker also reported that Till had moved out of the apartment she was renting with Chavous because, Till said, they were arguing and she was afraid of Chavous due to their history of domestic violence. Till was living with her adult daughter, but Chavous continued to visit her there. Baker recommended terminating Till's parental rights

> based on the current and past history of drug abuse, and the history of domestic violence; and [because] Ms. Till does not seem to be able to, uh, resist Mr. Chavous;

> and I don't believe at this point that either of the parents are capable of protecting the child if the child were to go back into their custody. He [Chavous] tends to be able to influence her into drug use, and, uh, other things.

Baker believed that temporary custody was inappropriate because the court had terminated Till's parental rights to two of her other children due to Till's drug addiction and the domestic violence in the home. Although Baker was not aware of a specific instance of violence in Till's home in the preceding five months and she knew that Till was undergoing domestic violence counseling, Baker did not believe that the circumstances in her home had improved significantly over time. Additionally, Baker did not observe a strong bond between Till and her infant, although that could be because he was young, had never lived with Till, and they had only weekly visits.

Mary Catherine Knight, a volunteer with the Parish Nurse Program, worked with Till in her parenting classes and observed Till volunteering in the church nursery school. Knight learned that, in the three weeks before the March 16, 1999, proceeding, Till had secured a job. Although she was not aware of Till's positive test for drugs, Knight believed that Till had made changes in her life and needed additional assistance, such as parenting classes, drug treatment, and more structure. Knight believed that the correct course of action would be to allow Till to continue to visit her infant and to give Till additional time to "get herself together . . . ."

At the end of the proceeding, the referee indicated that she was willing to terminate Till's parental rights because of her relapse into drug use. The referee's written findings, which the trial court reviewed and approved, recounted the circumstances of the case, including the terms of the parenting agreement, the time Till's other children spent as temporary court wards, the termination of Till's parental rights to two of her other children, and Till's history of drug use and domestic violence. Additionally, the referee found that Till fully complied with the parenting agreement, going to counseling, taking parenting classes, submitting to random drug screening, and maintaining a safe and suitable home for a child until February 16, 1999,[2] when she tested positive for cocaine. The referee also found that the FIA made reasonable efforts to reunite Till and her baby, including referring her to services, arranging for her transportation, telephoning and writing Till, making visitation schedule adjustments, and paying for drug and alcohol testing.

The referee determined that the infant had special needs because he tested positive for cocaine and opiates at birth, and he needed permanent planning in order to continue to grow and develop; terminating Till's parental rights was not clearly contrary to the infant's best interests because Till, who had not shown a commitment to planning for reunification, was unable or unwilling to meet her infant's needs due to her longstanding drug use, the length of time it would take for her to be rehabilitated, and the time necessary for her to provide for the baby. Accordingly, the referee and the trial court concluded that there was clear and convincing evidence supporting termination because of failure to provide proper care, termination of Till's parental rights to two of her other children for neglect or abuse, and a reasonable likelihood that the infant would be harmed if given to Till. MCL 712A.19b(3)(g), (i), and (j); MSA 27.3178(598.19b)(3)(g), (i), and (j).

II. Till's Argument

Till contends that the trial court clearly erred when it found clear and convincing evidence that she failed to provide proper care and custody for her infant under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). Till apparently objects to termination of her parental rights under this statutory section because she claims that she was in a no-win situation, having never had custody of her infant. In other words, she evidently argues that there was insufficient evidence that she was failing to or had previously failed to provide proper care and custody for her infant son because FIA placed him in her sister's custody immediately after his birth, thereby depriving her of an opportunity to provide proper care and custody for him.

III. Standard Of Review

This Court reviews a trial court's findings of fact supporting termination of parental rights for clear error. MCR 2.613(C); *In re Hall-Smith*, 222 Mich App 470, 473, 564 NW2d 156 (1997).

IV. Analysis

MCL 712A.19b(3) (g); MSA 27.3178(598.19b)(3)(g) provides that a trial court may terminate a respondent's parental rights if there is clear and convincing evidence that

> [t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

Till cites two cases in support of her argument that the trial court could not have found clear and convincing evidence of her failure to provide proper care and custody for her infant when she never had custody of him: *In re Arntz*, 125 Mich App 634; 336 NW2d 848 (1983); rev'd in part 481 Mich 941 (1984) and *In re Moore*, 134 Mich App 586; 351 NW2d 615 (1984). In *Arntz* the Supreme Court peremptorily reversed this Court's decision affirming the trial court's order terminating the parents' parental rights. 481 Mich 941. The Supreme Court reasoned that, even though the parents had not, themselves, provided care and custody for their children, they had *provided for* proper care and custody by placing the children with the children's paternal grandparents, who furnished an "adequate home environment" for the children. *Id*.

Similarly, this Court in *Moore* reversed the trial court's order terminating the respondent-mother's parental rights for asking the Department of Social Services to take temporary custody of her children when she was threatened with eviction. *Id*. at 594. This Court wrote in response to the facts of the case:

> While we have no doubt that respondent is not an ideal parent, we are equally convinced that . . . termination of respondent's parental rights was unwarranted. The simple fact is that this record contains no real evidence of neglect by respondent but, rather, shows only that a poorly educated woman without substantial job skills who has largely made her own way in the world since the age of 13 has had problems obtaining housing for her children. The ultimate moral of this case is that a mother without the

> current means of supporting her children should do anything but attempt to get aid from the Department of Social Services if she wants to keep her children. [*Id*. (citation and footnote omitted).]

The common thread in *Arntz* and *Moore* is that a parent's efforts to secure proper care and custody for his or her children, even if that entails placing the children with other people, cannot be considered a failure to provide that proper care and custody. Stated another way, the law requires parents to *provide* proper care and custody for their children, not necessarily to have custody of the children and personally care for them.

In this case, however, there is no evidence that Till sought out the FIA to provide proper care and custody for her infant after his birth so that she could undergo drug rehabilitation. Rather, the record indicates that the tests performed on Till's baby after his birth indicating that he had been exposed to cocaine and opiates while in-utero prompted hospital staff to contact FIA about proper care and custody. The record is, essentially, neutral when it comes to evidence of Till's efforts to provide for her infant. She took few positive steps to care for him other than engaging in regular visitation and seeking the treatment she needed to improve her ability to parent, but at the same time she, individually, did not neglect him because he was living with Tyson. Perhaps Till's difficulties arranging for Tyson to receive government food so Tyson could care for Till's infant son is some evidence that, within the context of the temporary custody arrangement, Till did not do her utmost to provide proper care for her child. Yet, that alone does not appear to be clear and convincing evidence of her neglect.

There appears to be ample evidence supporting the trial court's conclusion that Till's relapse into drug use will prevent her from providing proper care and custody for her infant "within a reasonable amount of time considering the child's age." MCL 712A.19b(3) (g); MSA 27.3178(598.19b)(3)(g). Till has a documented history of using drugs without long-term success at rehabilitation. That history is replete with evidence that, eventually, after Till begins using drugs she is unable to care for her children. However, MCL 712A.19b(3) (g); MSA 27.3178(598.19b)(3)(g) uses the conjunction "and," which appears to require both an actual failure to provide care and custody for her infant *as well as* a future inability to do so in a reasonable amount of time. See *Thrifty Rent-A-Car Systems v Dep't of Transportation*, 236 Mich App 674, 679; 601 NW2d 420 (1999). If there was evidence of some act or omission by Till indicating that she actually failed to provide proper care and custody for her infant, as opposed to her other children, then that evidence is not obvious from the record, much less clear and convincing. Accordingly, even though Till did not take any specific steps to provide for the proper care and custody of her infant, termination under a statutory provision that essentially relies on positive proof of *neglect* is impermissible when there is no evidence of an act or omission amounting to neglect regardless of intent. See generally *In re Moore*, *supra* at 593-594; see also *In re Bedwell*, 160 Mich App 168, 172, 175; 408 NW2d 65 (1987) (court could not terminate the mother's parental rights for emotional neglect of her children without evidence of a "culpable act or omission" by the mother). But see *In re Jacobs*, 433 Mich 24, 35-37; 444 NW2d 789 (1989) (disapproving of *In re Bedwell*'s requirement that the neglectful act or omission be blameworthy, but not obviating the petitioner's burden of showing an act or omission).

Nevertheless, a court needs clear and convincing evidence of only one statutory ground to terminate parental rights. See *In re SD*, 236 Mich App 240, 246; 599 NW2d 772 (1999). Till does not challenge the trial court's findings with respect to the grounds for terminating her parental rights to her infant under MCL 712A.19b(3) (i) and (j); MSA 27.3178(598.19b)(3)(i) and (j). Thus, the Court may presume that the trial court did not err when finding clear and convincing evidence to terminate her rights under these other provisions. See *In re JS and SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998).

Affirmed.

/s/ Harold Hood
/s/ Hilda R. Gage
/s/ William C. Whitbeck

[1] Till's oldest daughter had reached the age of majority.

[2] The referee noted that there was testimony that Till stated that she was drug-free on February 18, 1999, two days after she tested positive for drugs. However, the testimony at the termination hearing was that respondent Chavous tested positive for drugs on February 16, 1999 and Till tested positive for drugs four days *after* she testified, on February 22, 1999.